



Fifth District Clarifies *Blackstone v. Moore* Reach and Confirms *West v. Bode* Effect

Apr 16, 2021

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In its April 5, 2021 decision in [McCombs, Sr. v. Dennis](#), 2021-Ohio-1181, 5th Dist. No. 2020CA00148, 2021 WL 1289838, the Fifth District Court of Appeals addressed a dispute over oil and gas ownership based upon a 1910 deed severing “all of the oil and gas.”[\[1\]](#) However, *McCombs* does not involve a substantive application of the Marketable Title Act, R.C. 5301.47 *et seq.* (MTA) Instead, the Appellants (Dennis, et al.) argued that *Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132, which involved applicability of the MTA to oil and gas royalties, was confined to its facts—i.e., that the MTA only applied to royalties and NOT to severed fee minerals.[\[2\]](#)

In 1910, John and Linda Patterson conveyed their interest in 122 acres to Charles McCombs, reserving “all of the oil and gas” underlying the 122 acre tract.[\[3\]](#) John Patterson died on June 3, 1910, bequeathing 1/3 of his real and personal property, including “oil, gas, coal, etc.” to his wife, Linda Patterson, and an undivided 2/3 to his daughter, Ethel May Patterson.[\[4\]](#) This appears to have been the last reference the severed oil and gas chain. McCombs, who owned the surface and sought extinguishment of this severed mineral interest, filed a quiet title action in November 2019. The trial court determined that the MTA extinguished the mineral rights.[\[5\]](#) The Fifth District Court of Appeals agreed.

Dennis did not make a substantive argument that the severed mineral interest was preserved under the MTA (e.g., via reference after the root of title). Instead, Dennis argued that the Ohio Supreme Court’s ruling in *Blackstone v. Moore* was confined to its facts only—that the MTA only applies to royalty interests and not fee mineral interests.[\[6\]](#) The Court was not persuaded, emphasizing that the language of the MTA, in R.C. 5301.49 provides that the owner shall take free and clear of “all interests, claims, or charges whatsoever”.[\[7\]](#) The court also noted that the *Blackstone* holding was recently applied to a fee mineral interest in *Erikson v. Morrison*,

2021-Ohio-746, and made no distinction between royalty interests and mineral interests.

Dennis also argued that, per the decisions in *Straits v. Shepler*, Fifth Dist. Holmes No. 332, 1982 WL 2919, and *Heifner v. Bradford*, 5th Dist. Muskingum No. 81-10, 1982 WL 2902, there could be no extinguishment of the mineral interest because there was no conveyance into McCombs. That is, the severed minerals had their own separate chain of title taking it outside of the MTA's ambit.^[8] Again, the Fifth District was not persuaded, noting that these cases were effectively overruled sub silentio after *Blackstone* and the Fifth District's decisions that followed it (dealing with whether specificity of reference to prior mineral severances).^[9]

McCombs is not groundbreaking, but it does clarify the scope of the MTA as covering "all interests" and confirms the mechanics of the MTA in the wake of *Blackstone* and *West v. Bode*.

For more information, please contact [Christopher Rogers](#), [Mike Brewster](#), or any attorney in Frost Brown Todd's [Oil & Gas](#) industry team.

^[1] *McCombs*, ¶ 2.

^[2] *McCombs*, ¶ 11.

^[3] *McCombs*, ¶ 2.

^[4] *McCombs*, ¶ 3.

^[5] *McCombs*, ¶ 5.

^[6] *McCombs*, ¶ 11.

^[7] R.C. 5301.49 (emphasis added).

^[8] *McCombs*, ¶ 14.

^[9] *McCombs*, ¶ 14.

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